Article 15. Vested Rights Determination

§ 3950. Pursuant to Public Resources Code Sections 2774.4 or 2774.5, where the board exercises and/or assumes some or all of the lead agency's powers, the board shall not conduct vested rights determinations.~~Purpose of Regulations. No person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976 shall be required to secure a permit pursuant to Section 2770 of the Public Resources Code. Any person claiming a vested right to conduct surface mining operations in a jurisdiction where the State Mining and Geology Board (the Board) is lead agency pursuant to section 2774.4 of the Public Resources Code must establish such claim in a public proceeding under this article. In such a proceeding the Claimant shall assume the burden of proof.~~

NOTE

Authority: Sections 2755 ~~and 2775~~, Public Resources Code. Reference: 2774.4 and 2774.5, Public Resources Code.~~Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.~~

~~**§ 3951.** Vested Right(s) - Definition. A "vested right" is the right to conduct a legal nonconforming use of real property if that right existed lawfully before a zoning or other land use restriction became effective and the use is not in conformity with that restriction when it continues thereafter. A vested mining right, in the surface mining context, may include but shall not be limited to: the area of mine operations, the depth of mine operations, the nature of mining activity, the nature of material extracted, and the quantity of material available for extraction. A person shall be deemed to have a vested right or rights to conduct surface mining operations if, prior to January 1, 1976, the person has, in good faith and in reliance upon a permit or other authorization, if the permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary for the surface mining operations. Expenses incurred in obtaining the enactment of an ordinance in relation to a particular operation or the issuance of a permit shall not be deemed liabilities for work or materials. Expansion of surface mining operations after January 1, 1976 may be recognized as a vested nonconforming use under the doctrine of "diminishing assets" as set forth in *Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal.4th 533.~~

~~*NOTE*~~

~~*Authority: Sections 2755, 2776 and 2775, Public Resources Code; Hansen Brothers Enterprises, Inc. v. Board of Supervisors (1996) 12 Cal.4th 533.) Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.*~~

~~**§ 3952** Filing of Request for Determination. A claim of vested rights shall be initiated by filing a Request for Determination with the Board. At a minimum the Request for Determination shall include the following information:~~

~~(1) Name, address, and telephone number (and name, address, and telephone number of any agent for contact or service of notice, if different) of Claimant;~~

~~(2) Name, address, and telephone number of the property owner(s) if different than (1) above;~~

~~(3) Name, address, and telephone number of any lessee, lien holder, or other potential claimant to the vested right(s) asserted;~~

~~(4) A map indicating the exact location of the property upon which vested rights are asserted;~~

~~(5) A legal description of such property including township and range, metes and bounds, parcel numbers, or other descriptive methods to specifically identify such property;~~

~~(6) Copies of all documents which Claimant asserts establish title to such property;~~

~~(7) Written statements, with supporting documentation, indicating the basis for claim of a vested right to conduct surface mining operations upon such property;~~

~~(8) Written statements, with supporting documentation, identifying the scope or scale of the vested right claimed;~~

(9) Copies of, or statements specifically identifying, all local land use or mining ordinances or regulations which either may presently, or have historically, governed conduct of surface mining operations upon such property;
(10) The names and mailing addresses of the owners of all properties adjacent to property upon which a vested right is being asserted; and
(11) The name and address of any other governmental agency or entity having jurisdiction over the property or the surface mining operations on the property that may be affected by a determination of vested rights. All information submitted pursuant to this section shall be accompanied by a declaration or affidavit attesting to the true and accurate nature of the materials provided.
NOTE
Authority: Sections 2755 and 2775, Public Resources Code. Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.

§ 3953 Review and Determination Fee. Two fees are to be paid by the claimant submitting a Request for Determination. Any person submitting a Request for Determination shall pay to the Board the following processing fee:
(a) A minimum processing fee of five thousand dollars ($5,000) as compensation for the initial review and notification. Should the Request for Determination be denied, any funds not used will be refunded.
(b) A determination fee for conducting the vested rights determination will be established. The claimant will be provided with an estimate of the cost of conducting a vested rights determination. Any funds in excess of the amount actually needed for conducting the determination will be refunded to the claimant. Any uncollected funds must be submitted prior to the official release of the determination. The fees in this subdivision shall be paid to the Board prior to release of any vested rights determination.
(1) If the Board employs an administrative hearing officer or special master for, and in, making the determination, an additional fee of one hundred dollars ($100) per hour for each full hour of time reasonably employed by such hearing officer or special master for drafting the findings and recommendation or proposed decision for the Board.
(2) If the Board employs a committee of its members for, and in, making the determination, an additional fee of one hundred dollars ($100) per Board committee member per day of service (or part thereof);
(c) Upon a showing of good cause the Board may waive all but a minimum of one hundred dollars ($100) of the fees imposed in subdivisions (a) and (b) above.
(d) Failure to submit the initial fee (identified in subsection (a) above) shall result in immediate rejection of the Request for Determination.
NOTE
Authority: Sections 2755 and 2775, Public Resources Code. Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.

§ 3954 Determination of Jurisdiction. The Chairman of the Board, or the Chairman's designee, based upon the information submitted pursuant to Section 3952 of this article, shall initially evaluate whether the Request for Determination is within the jurisdiction of the Board for purposes of making a vested rights determination and whether the Request for Determination contains the minimum information specified in Section 3952 of this article. The Chairman of the Board, or the Chairman's designee, shall make such initial determination within 15 business days of receipt of the Request for Determination. If the Chairman, or the Chairman's designee, determines that the Request for Determination is not within the Board's jurisdiction or does not contain the information required by the Board to evaluate the Request, the Request for Determination shall be rejected and the deficiencies in the Request specifically identified in correspondence to the claiming party.
NOTE
Authority: Sections 2755 and 2775, Public Resources Code. Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.

§ 3955 Notice of Pending Determination.

Within 30 business days after the Chairman of the Board, or the Chairman's designee, concludes that the Request for Determination is within the Board's jurisdiction and contains the minimum information required by Section 3952 a notice of pending vested rights determination shall be mailed by the executive officer of the Board to every adjacent landowner identified in the Request for Determination and to the county, city, or regional agency originally holding lead agency status for the identified property and mining operation. A notice of pending vested rights determination shall also be provided to the person claiming vested rights for posting, within 5 days of receipt, upon the property in question in an open and conspicuous place that is reasonably visible to the public and at all points of entry to the property. The notice of pending vested rights determination shall identify the specific property upon which such vested rights are asserted and shall identify the Board as the agency which will be making the determination. The notice shall contain the Board's mailing and electronic addresses and a request that comments be forwarded to the Board. The notice shall remain posted as required through the conclusion of any hearing on the vested rights claim. The notice shall also be immediately noticed and placed on the Board's electronic website. Where the Board determines that additional notice is required, it may require the person claiming vested rights to provide such additional notice.

NOTE

Authority: Sections 2755 and 2775, Public Resources Code. Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.

§ 3956 Public Hearing. No vested rights determination will be made by the Board without a public hearing and an opportunity for the vested rights claimant, the original lead agency, and the public to comment.

NOTE

Authority: Sections 2755 and 2775, Public Resources Code. Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.

§ 3957 Selection of Hearing Officer. The Board may delegate conduct of a vested rights public hearing to a committee of at least two Board members to be appointed for that hearing by the Chairman of the Board. The Board may also delegate conduct of a vested rights public hearing to an administrative hearing officer or special master. As soon as practicable after the Chairman, or the Chairman's designee, concludes that the Request for Determination is within the Board's jurisdiction and contains the minimum information required by Section 3952, and in no event more than 45 business days from such conclusion, the Board, or a designee of the Board shall decide whether a vested rights public hearing will be conducted by the Board, a committee of the Board, an administrative hearing officer selected by the Board, or a special master selected by the Board.

NOTE

Authority: Sections 2755 and 2775, Public Resources Code. Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.

§ 3958 Vested Rights Hearing – Schedule. The Board, its delegated committee, administrative hearing officer or special master shall schedule and hold a public hearing on a vested rights determination no less than 90 business days after the notice of pending vested rights determination was mailed pursuant to Section 3955. In no case shall the hearing be scheduled more than 180 business days after the Chairman, or the Chairman's designee, concludes that the Request for Determination is within the Board's jurisdiction and contains the minimum information required by Section 3952 unless such hearing schedule is agreed to by the party claiming vested rights. The hearing scheduled may be within the county where the vested right is claimed or within the county of the Board's offices (County of Sacramento).

NOTE

Authority: Sections 2755 and 2775, Public Resources Code. Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.

§3959 Vested Rights Hearing Procedure – Notice/Submission of Written Materials.
(a) At least 90 calendar days prior to a vested rights public hearing, the Board shall give further public notice as follows:
(1) By mailing the notice to the Claimant and all parties receiving notice pursuant to Section 3955;
(2) By mailing the notice to any person who requests notice of the hearing;
(3) By mailing the notice to the Board's regular mailing list; and
(4) By posting of the notice in a place where notices are customarily posted in the city, or county, or regional jurisdiction within which the property is located or the surface mining operations are to take place (or both, if affected operations and affected property are in different jurisdictions.)
(b) The notice of hearing shall include the following:
(1) The name of the party claiming vested rights;
(2) Identification of the surface mining operation, a brief description of the location of the operation and area of asserted vested rights by reference to any commonly known landmarks in the area, and a simple location map indicating the general location of the operation;
(3) A statement inviting the party claiming vested rights, the original lead agency, and the public to make statements at the hearing regarding the vested rights asserted;
(4) A request that any additional written materials be delivered to the Board no less than 60 calendar days before the hearing and in no case will any responsive materials be submitted less than 45 calendar days prior to the hearing.
(5) The time, date, and location of the public hearing.
NOTE
Authority: Sections 2755 and 2775, Public Resources Code. Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.

§ 3960 Vested Rights Hearing Procedure - Record. The initial record before the Board, its delegated committee, administrative hearing officer, or special master shall be all of the materials provided pursuant to Section 3952, and all other written materials and public comments provided in response to the notice of pending determination or received at the public hearing.
NOTE
Authority: Sections 2755 and 2775, Public Resources Code. Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.

§ 3961 Vested Rights Hearing – Sequence.
(a) The public hearing should normally proceed in the following manner:
(1) Identification of the record;
(2) Statements on behalf of the vested rights Claimant;
(3) Statements on behalf of the agency originally holding lead agency status;
(4) Statements on behalf of the public;
(5) Rebuttal on behalf of the Claimant; and
(6) Motion to close the public hearing.
(b) Notwithstanding the above, the Chairman of the Board or the delegated committee's selected chair, or the Board's designee for purposes of conducting the hearing may in the exercise of discretion, determine the order of the proceedings, provide for additional testimony, or provide for additional rebuttal.
(c) The Chairman of the Board or the delegated committee's selected chair, or the Board's designee may impose reasonable time limits upon statements and presentations and may accept written statements in lieu of oral statements. Written statements must be submitted at least five business days prior to the hearing.
(d) All statements of fact made at the hearing shall be under oath as administered by the Chairman of the Board or the delegated committee's selected chair, or the Board's designee.
(e) The public hearing shall be recorded either electronically or by other convenient means.

NOTE
Authority: Sections 2755 and 2775, Public Resources Code. Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.

§ 3962 Vested Rights Hearing Procedure - Continuance. The public hearing may be continued from day to day as necessary to receive all of the statements, information, and testimony identified in Section 3961.
NOTE
Authority: Sections 2755 and 2775, Public Resources Code. Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.

§ 3963 Vested Rights Hearing Procedure - Evidence.
Relevant evidence in a proceeding for determination of a claim of vested rights shall be written or oral evidentiary statements or material demonstrating or delimiting the existence, nature and scope of the claimed vested right[s]. Such evidence shall include, but is not limited to, evidence of any permit or authorization to conduct mining operation on the property in question prior to January 1, 1976, evidence of mining activity commenced or pursued pursuant to such permit or authorization, and evidence of any zoning or land use restrictions applicable to the property in question prior to January 1, 1976. As to any land for which Claimant asserts a vested right for expansion of operations, Claimant shall produce evidence demonstrating that the Claimant clearly intended to expand into such areas. Such evidence shall be measured by objective manifestations, and not subjective intent at the time of passage of the law, or laws, affecting Claimant's right to continue surface mining operations without a permit.
NOTE
Authority: Sections 2755 and 2775, Public Resources Code. (See, *Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal.4th 533.) *Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.*

§ 3964 Vested Rights Hearing Procedure - Determination.
Following the public hearing, the Board, if the Board conducted the hearing, or its committee, administrative hearing officer, or special master shall determine whether the Claimant, by a preponderance of the evidence, has demonstrated a claim for vested rights pursuant to Public Resources Code Section 2776. The determination shall identify upon what specific property the vested rights are established and the scope and nature of surface mining operations included within the established vested right or rights. If the public hearing was conducted by a committee of the Board or an administrative hearing officer or special master designated by the Board, the findings and recommendation or proposed decision of the committee of the Board, administrative hearing officer, or special master shall be presented to a quorum of the Board at a regular business meeting, no later than 60 business days after completion of the vested rights public hearing, for consideration and adoption by the full Board. The Board may adopt the recommendation or proposed decision or reject the recommendation or proposed decision and direct the matter back to its delegee for further consideration in light of the discussion before the full Board. The Board may also modify the proposed decision based upon the record before it or make an alternative determination based upon the record or following receipt of additional evidence before the full Board. Following adoption of the Board's final determination notification shall be made by certified mail to the party claiming vested rights and to the local agency originally holding lead agency status. Notification of the final determination of the Board shall also be made by regular mail to any person who commented at, or participated in, the public hearing, any person who has requested such notice, and shall be immediately posted upon the Board's website.
NOTE
Authority: Sections 2755 and 2775, Public Resources Code. Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.

§ 3965 Effect of Vested Rights Determination. A final determination by the Board recognizing a claim of vested rights shall constitute acknowledgment that the specific surface mining operations as identified upon the specific property or properties does not require a permit under Public Resources Code Section 2770 provided that no substantial change may be made in such mining operations. If any vested rights identified pursuant to this article are waived or abandoned the surface mining operations identified shall become subject to the permit requirements of the Surface Mining and Reclamation Act.

NOTE

Authority: Sections 2755 and 2775, Public Resources Code. Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.